

No. 14753

United States  
Court of Appeals  
for the Ninth Circuit

*See Also  
No. 15768 Vol. 3053*

LAU AH YEW,

Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Appellee.

Transcript of Record

Appeal from the United States District Court  
for the District of Hawaii.

FILED

JUL 20 1955



No. 14753

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**United States  
Court of Appeals**  
for the Ninth Circuit

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LAU AH YEW,

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**Appeal from the United States District Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For the Appellant, Lau Ah Yew:

W. Y. CHAR, ESQ.,  
Room 311, Liberty Bank Buliding,  
Honolulu, T. H.

For the Appellee, John Foster Dulles, Etc.:

LOUIS B. BLISSARD, ESQ.,  
United States Attorney;  
CHARLES B. DWIGHT III,  
Asst. U. S. Atty.,  
Federal Building,  
Honolulu, T. H.





In the United States District Court in and for the  
District of the Territory of Hawaii

Civil No. 1254

LAU AH YEW,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Defendant.

COMPLAINT UNDER SECTION 503 UNITED  
STATES NATIONALITY ACT

SECOND AMENDED COMPLAINT

I.

That the Plaintiff is a citizen of the United States of America, having been born in Honolulu, Territory of Hawaii; that he claims his United States citizenship by reason of the fact that he was born on American soil; that he had resided in said Honolulu for a period in excess of 30 years; that he served as a member of the Hawaii Defense Volunteers from July 5, 1942, to July 4, 1945.

II.

That the defendant, John Foster Dulles, is the Secretary of State of the United States of America, with central offices located in Washington, D. C.

III.

That plaintiff was born in Honolulu, Territory of Hawaii, on February 1, 1898; that he left Honolulu

with his father, Lau Sing, for China when he was about 8 months old; that he returned to Honolulu in 1915, at which time he produced 3 witnesses who testified before the Immigration authorities that he was born in said Honolulu; that, after said hearing and testimony, the Immigration authorities admitted him as a native-born citizen of the United States; that from 1915-1922, plaintiff resided continuously in the United States; that, in 1922, before plaintiff departed on his 2nd visit to China, the Immigration authorities in San Francisco issued to him Form 430, a [3\*] certificate certifying that he was a citizen of the United States; that he returned to San Francisco from China in 1923 and the Immigration authorities at said port of entry readmitted him as a United States citizen; that, shortly thereafter, he returned to Honolulu where he was issued a Certificate of Identity certifying that he was a citizen of the United States by the Immigration authorities in Honolulu; that, from 1923-1947, he resided continuously in Honolulu aforesaid; and that, prior to plaintiff's departure from Honolulu for Hong Kong, on July 4, 1947, he deposited his said Certificate of Identity with the Immigration authorities at Honolulu.

That, in June, 1952, plaintiff, asserting his United States citizenship by virtue of birth in the Territory of Hawaii, claimed that, as such United States citizen, he was entitled to have issued to him a United States passport by the American Consulate

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

General in Hong Kong, defendant's official agency charged with the duty of issuing United States passports to persons claiming United States citizenship; that the issuance of United States passports by the defendant's agency was a right or privilege enjoyed exclusively by United States citizens; that, pursuant to said claim, the plaintiff, in June, 1952, personally applied at the American Consulate General at Hong Kong for a United States passport; that the presentation of a valid United States passport issued by the United States Consulate General at Hong Kong was an absolute and indispensable prerequisite to the purchase of passage from any transportation company in Hong Kong to travel to the United States; that, pursuant to plaintiff's application for a United States passport, he was interviewed by the Vice Consul in charge of the processing of applications for United States passports; that at this interview with the Vice Consul at the American Consulate General's office in Hong Kong, in June, 1952, in order to prove his United States citizenship, plaintiff produced certain documents, such as his Honorable Discharge Certificate issued by the Hawaii Defense [4] Volunteer of the Territory of Hawaii certifying to his service from July, 1942, to July, 1945, his draft board certificate and other documents as shown in plaintiff's Exhibits A, B, C, D, E, F, and G attached to his Affirmation made on February 6, 1954, on file herein and made a part hereof; that he testified to his birth in Hawaii and to the fact that, except for one year's

absence in China, he had resided continuously in Honolulu, Territory of Hawaii, for a period of 32 years, to wit: from 1915 to 1947; that, at the conclusion of said interview, said Vice Consul, as the executive officer of the defendant, in the performance of his duties as officer in charge of the processing of applications for United States passports, returned to the plaintiff all the above-described documentary evidence tending to prove his United States citizenship and denied his application for a United States passport to enter the United States upon the ground that he was not a national of the United States; that it was the opinion of the Vice Consul that the proof offered and presented to him was insufficient to establish plaintiff's United States citizenship; that, by reason of said Vice Consul's refusal to issue to plaintiff a United States passport, he, plaintiff, against his will was forced to continue to reside in a foreign country; that plaintiff, a person claiming United States citizenship by virtue of birth in the United States, has the right or privilege of entering and residing in the United States; that the American Consulate General's refusal to issue to plaintiff said passport is the restraint of a fundamental right of a United States citizen to enter and reside in his own country; that such a restraint is a violation of personal liberty, freedom of movement and a denial of a right or privilege guaranteed to him by the United States Constitution, and the refusal of the defendant by [5] and through his official executive, to wit:



the American Consulate General in Hong Kong, to issue to him said United States passport is the denial of a right or privilege of a United States citizen on the ground that he is not a national of the United States.

#### IV.

That the said Lau Ah Yew was married in the City and County of Honolulu, Territory of Hawaii; that, from this marriage, there are four children, to wit: William, Richard, Goldie, and Lita, all United States citizens; that the two sons, William Yee Kam Lau and Richard Yee Wing Lau, are veterans of the Army of the United States.

#### V.

That plaintiff claims that he is a United States citizen by virtue of his birth in the Territory of Hawaii; that he is entitled to establish and to have this Court declare his United States nationality under Section 503, United States Nationality Act; that, as a citizen and national of the United States of America, he is entitled to a United States passport to enable him to enter and reside in the United States.

Wherefore, plaintiff prays for judgment and decree, adjudging that he is a citizen and/or national of the United States of America and, as such, is entitled to the rights and/or privileges of a national of the United States of America, and a United States passport forthwith in order to return to the United States of America.

Dated: Honolulu, T. H., this 24th day of April, 1954.

/s/ W. Y. CHAR.

Receipt of copy acknowledged.

[Endorsed]: Filed April 26, 1954. [6]

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In the United States District Court for the  
District of Hawaii  
Civil No. 1254

LAU AH YEW,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,  
Defendant.

### MOTION TO DISMISS SECOND AMENDED COMPLAINT

Comes now A. William Barlow, United States Attorney for the District of Hawaii, and moves that the Second Amended Complaint herein be dismissed upon the following grounds:

1. It affirmatively appears upon the face of the complaint that the plaintiff has failed to state a claim or cause of action against the defendant upon which relief can be granted.

2. It affirmatively appears upon the face of the complaint that this Honorable Court lacks jurisdiction over the subject matter of the complaint filed herein.

Dated: Honolulu, T. H., this 7th day of May,  
1954.

A. WILLIAM BARLOW,  
United States Attorney,  
District of Hawaii;

By /s/ LOUIS B. BLISSARD,  
Asst. United States Attorney,  
District of Hawaii. [8]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS

To: W. Y. Char, Room 311, Liberty Bank Building,  
Honolulu, T. H., Attorney for Plaintiff.

You are hereby notified that the foregoing Motion to Dismiss Second Amended Complaint will be heard before the Honorable J. Frank McLaughlin, Judge of the United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on Friday, May 21, 1954, at 10:00 a.m., or as soon thereafter as counsel may be heard.

Dated: Honolulu, T. H., this 7th day of May,  
1954.

A. WILLIAM BARLOW,  
United States Attorney,  
District of Hawaii;

By /s/ LOUIS B. BLISSARD,  
Asst. United States Attorney.

[Endorsed]: Filed May 7, 1954. [12]

[Title of District Court and Cause.]

### ORDER OVERRULING MOTION TO DISMISS

On the 21st day of May, 1954, this cause coming on to be heard upon the motion of the Defendant to dismiss the second amended complaint and the court, having heard the parties by their respective counsel and being fully advised, denies the motion to dismiss upon the grounds that the complaint does state a claim or cause of action against the defendant upon which relief can be granted and that this court has jurisdiction over the subject matter of the second amended complaint filed herein.

It is Therefore Ordered, that the motion to dismiss the second complaint be, and it is hereby, denied.

Dated: Honolulu, T. H., this 25th day of May, 1954.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States  
District Court.

Approved as to Form:

/s/ LOUIS B. BLISSARD,  
Asst. United States Attorney.

[Endorsed]: Filed May 26, 1954. [14]



[Title of District Court and Cause.]

MOTION TO STRIKE

Defendant, John Foster Dulles, Secretary of State of the United States of America, moves the Court to strike Plaintiff's Second Amended Complaint filed herein on April 26, 1954, as sham and false and for such further relief as may be appropriate.

This motion is brought under Rule 11 of the Federal Rules of Civil Procedure and is based upon the record heretofore made and upon the interrogatories by Defendant, and Plaintiff's answers to interrogatories by Defendant which are attached hereto and made a part hereof, and upon the State Department file which, at the present time is in evidence before this Court.

Dated: Honolulu, T. H., this 28th day of January, 1955.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, Attorney for Defendant;

By /s/ CHARLES B. DWIGHT, III.,  
Asst. United States Attorney,  
District of Hawaii. [16]

[Title of District Court and Cause.]

## INTERROGATORIES BY DEFENDANT

Sir:

Please take notice that the defendant herein requires the plaintiff, Lau Ah Yew, to answer the following interrogatories under oath within fifteen days from the date of service herein pursuant to Rule 33 of the Federal Rules of Civil Procedure:

1. State the name of the American Vice Consul in Hong Kong who interviewed you in June, 1952, when you reportedly applied for a United States passport.

2. If you do not know the name of the American Vice Consul who interviewed you in June, 1952, describe his physical appearance in detail.

3. Describe the manner in which you made the application for a United States passport at the American Consulate in Hong Kong in June, 1952.

4. List and describe all the documents and any other evidence of American citizenship presented by you at the time you reportedly applied for a United States passport at the American Consulate in Hong Kong in June, 1952.

5. Did you at that time present an identifying witness who was a United States citizen?

6. Did you ever at any other time present at the American Consulate in Hong Kong an identifying witness who was an American citizen? [18]

7. Have you ever presented to the American Consulate in Hong Kong a birth certificate?

8. At the interview with the American Vice Consul in Hong Kong in June, 1952, did the Vice Consul tell you you had not presented sufficient evidence to establish your identity?

9. At the interview with the American Vice Consul in Hong Kong in June, 1952, did the Vice Consul tell you you had not presented sufficient evidence to establish the fact that you were born in the United States?

10. Did the Vice Consul tell you that he was not satisfied that you were an American citizen?

11. Did the Vice Consul advise you as to what further type of evidence you should submit in order to establish your American citizenship?

12. Did the Vice Consul tell you that he was satisfied that you were not an American citizen?

13. Have you applied to the American Consulate in Hong Kong for a Certificate of Identity to enable you to come to Hawaii to prosecute your declaratory judgment action in the United States District Court?

14. If so, when?

15. Have you ever been denied by anyone at the American Consulate in Hong Kong a Certificate of Identity for the purpose of enabling you to come to Hawaii to prosecute your declaratory judgment suit in the United States District Court?

16. If so, when?

17. If you have been denied a Certificate of Identity, have you appealed such denial to the Secretary of State? [19]

18. If so, when?

Dated: Honolulu, T. H., this 25th day of May, 1954.

A. WILLIAM BARLOW,  
United States Attorney, District of Hawaii, Attor-  
ney for Defendant;

By /s/ LOUIS B. BLISSARD,  
Asst. United States Attorney,  
District of Hawaii.

To: W. Y. Char, Room 311, Liberty Bank Building,  
Honolulu, T. H., Attorney for Plaintiff. [20]

[Title of District Court and Cause.]

PLAINTIFF'S ANSWERS TO INTERROGA-  
TORIES MADE BY DEFENDANT ON 25th  
DAY OF MAY, 1954

The Plaintiff answers the said Interrogatories according to the Numbers thereof as follows:

1. I do not know.
2. The Vice Consul who interviewed me in June, 1952, was a man who spoke to me through a Chinese lady interpreter. He was a big man about 6-foot tall and weighed over 150 lbs. The interpreter wore spectacles with metal frames and was about 5 feet 3 inches tall and weighed more than 120 lbs. She was always present at my interviews.
3. Firstly by written letter to the Consulate General in May, 1952. On receiving no reply I

called in June, 1952, on one occasion and interviewed the persons described in Reply No. 2.

4. I produced:

(a) Identification Card of the U. S. Army dated 16th February, 1943, issued in Honolulu;

(b) Government Identity Card with a set of fingerprints [23] dated 4th January, 1942, issued in Honolulu;

(c) Hawaii Defense Volunteer Discharge Paper in the name "Yee Yew Lau" dated 5th July, 1945;

(d) Tax Release dated 19th May, 1947—issued in Honolulu;

(e) Letter from the Honolulu Immigration Office certifying that that Office refused to give me back my birth and citizenship certificate and a certificate or letter by one Yee Tim of my birth in Honolulu.

5. No.

6. No.

7. No.

8. Yes.

9. Yes.

10. Yes.

11. No, but he asked me for other evidence, and I said that I had produced all the evidence available. I cannot remember the questions which he asked me.

12. He said "I believe you are not an American Citizen" or words to that effect.

13. Yes.

14. 23rd December, 1952—at about 2:30 p.m. I interviewed an American lady who told me that



no Vice Consul was available in her Department. I delivered to her a typed application which had been sent to me by Mr. W. Y. Char, my attorney. I believed the 23rd December, 1952, to be the last day for the application to be sent in. I was told that I would be sent written notification should there be any news on the subject. In November, 1953, I was informed by an American man in the same Department of the [24] Consulate that a reply from Washington was awaited.

15. Yes.

16. I received a letter to that effect sometime after November, 1953.

17. Only in these proceedings as far as I am aware. I sent all my papers to the said Mr. W. Y. Char.

18. 8th February, 1954.

/s/ LAU AH YEW.

Signed and Affirmed by the Plaintiff, who is not a Christian, this 3rd day of June, 1954, through the Sworn Interpretation of Chan Hwa Hing, Interpreter, to the undersigned Notary at No. 2 Queen's Road Central, Hong Kong, before me:

/s/ CHAN HWA HING,

Interpreter to Messrs. Wilkinson and Grist, Solicitors and Notaries, Hong Kong.

[Seal] /s/ JAMES TEMPLER PRIOR,

Notary Public,

Hong Kong. [25]

[Title of District Court and Cause.]

NOTICE

To: W. Y. Char, Liberty Bank Bldg., Honolulu,  
T. H., Attorney for Plaintiff.

You are hereby notified that the foregoing Motion to Strike will be heard before the Honorable J. Frank McLaughlin, Judge of the United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on Friday, February 4, 1955, at 2:00 p.m., or as soon thereafter as counsel may be heard.

Dated: Honolulu, T. H., this 28th day of January, 1955.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, Attorney for Defendant;

By /s/ CHARLES B. DWIGHT, III,  
Asst. United States Attorney,  
District of Hawaii.

Receipt of copy acknowledged.

[Endorsed]: Filed January 31, 1955. [34]

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[Title of District Court and Cause.]

APPLICATION FOR THE ENTRY OF  
JUDGMENT BY DEFAULT AGAINST  
DEFENDANT

The Plaintiff, by his attorney, W. Y. Char, hereby applies for the entry of judgment by default against the Defendant herein upon the ground that no an-

swer by the defendant has been filed with the clerk of this court within ten days after the filing of the Order Overruling Motion to Dismiss dated May 25, 1954.

This application is based upon all the records and files herein.

Dated: Honolulu, T. H., this 13th day of January, 1955.

LAU AH YEW,  
Plaintiff;

By /s/ W. Y. CHAR,  
His Attorney. [36]

[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR THE ENTRY  
OF JUDGMENT BY DEFAULT AGAINST  
DEFENDANT

Sir:

Please take notice that upon the Application for the entry of Judgment by Default Against Defendant, dated the 13th day of January, 1955, and upon all the papers and proceedings had herein, the Plaintiff's Application for the Entry of Judgment by Default Against Defendant, will be presented to the Presiding Judge of the United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on January 21, 1955, at 2:00 p.m., or as soon thereafter as counsel can be heard for the entry of judgment by



default against Defendant and for such other and further relief as to the Court may seem just and proper.

Dated: Honolulu, T. H., this 13th day of January, 1955.

LAU AH YEW,  
Plaintiff;

By /s/ W. Y. CHAR,  
His Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed January 13, 1955. [37]

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[Title of District Court and Cause.]

ORDER DENYING APPLICATION FOR THE  
ENTRY OF JUDGMENT BY DEFAULT  
AGAINST DEFENDANT

The application for the entry of judgment by default against defendant having come on to be heard before the court on January 26, 1955, the plaintiff having been represented by his counsel, W. Y. Char, and defendant having been represented by Charles B. Dwight, III, Assistant United States Attorney, the motion having been fully argued and submitted to the court for decision, and the court having found: that plaintiff was not ready to proceed with proof of a prima facie case (Rule 55(c) F.R.C.P.); under the circumstances of this case if a default were entered it could easily be set aside good cause being shown by plaintiff's failure to serve answers to interrogatories on defendant until

time of default hearing; and because of the nature of United States citizenship it should not be granted by default.

Now, Therefore, It Is Hereby Ordered that the application for the entry of judgment by default against defendant be and the same is hereby denied.

Dated: Honolulu, T. H., this 8th day of March, 1955.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above-Entitled  
Court.

No Objection to Form:

/s/ CHARLES B. DWIGHT, III.,  
Asst. United States Attorney.

[Endorsed]: Filed March 8, 1955. [40]

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In the United States District Court for the  
District of Hawaii  
Civil No. 1254

LAU AH YEW,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Defendant.

ORDER TO STRIKE AND TO DISMISS

The Motion to Strike as sham and false of the  
Defendant, John Foster Dulles, having come on to

be heard before the Court on February 4, 1955, the Plaintiff having been represented by his counsel, W. Y. Char, Esquire, and the Defendant having been represented by Louis B. Blissard, United States Attorney, and Charles B. Dwight, III, Assistant United States Attorney, the Motion having been fully argued and submitted to the Court for decision, the Court having found the Motion to be well taken on the ground stated therein, namely, that the allegations of the Second Amended Complaint relating to application for a U. S. Passport by Lau Ah Yew, Plaintiff herein, and denial of the same passport application by the U. S. Consul are not substantiated by the Plaintiff's own answers to interrogatories posed by the Defendant concerning these allegations and are consequently sham and false.

Now Therefore, it is hereby ordered, adjudged and decreed that this Second Amended Complaint herein be stricken, and this cause be and the same is dismissed.

Dated: Honolulu, T. H., this 8th day of February, 1955.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District  
Court.

No Objection to Form:

/s/ W. Y. CHAR,  
Attorney for Plaintiff.

[Endorsed]: Filed February 8, 1955. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Lau Ah Yew, by W. Y. Char, attorney for plaintiff, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final order entered in this proceeding on February 8, 1955, granting the motion to strike the plaintiff's second amended complaint.

Dated: Honolulu, T. H., this 1st day of March, 1955.

LAU AH YEW,

Plaintiff,

By /s/ W. Y. CHAR,

His Attorney.

[Endorsed]: Filed April 7, 1955. [44]

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[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents:

That we, Lau Ah Yew, by his attorney, W. Y. Char, as Principal and Quon Ng Yee and Chang Foon Tong, as sureties, are held and firmly bound unto the United States Court of Appeals for the Ninth Circuit in the full sum of Two Hundred Fifty Dollars (\$250.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, the United States District Court for the District of Hawaii has entered an Order granting the motion to strike plaintiff's second amended complaint, and

Whereas, Notice of Appeal has been given to the United States Court of Appeals for the Ninth Circuit to secure a reversal of said Order,

Now, therefore, the condition of this obligation is such that if said appeal is dismissed or said Order is affirmed, and if said Plaintiff shall pay all costs as the said United States Court of Appeals for the Ninth Circuit may award, then this obligation shall be void, otherwise to remain in full force, effect and virtue. [45]

In Witness Whereof, the above-bounden Principal by his attorney and Sureties have hereto affixed their hands this 1st day of March, 1955.

LAU AH YEW.

By /s/ W. Y. CHAR,  
His Attorney.

/s/ QUON NG YEE,

/s/ CHANG FOON TONG.

Territory of Hawaii,  
City and County of Honolulu—ss.

Quon Ng Yee and Chang Foon Tong, being first duly sworn on oath, depose and say: That they are



the Quon Ng Yee and Chang Foon Tong named as Sureties and who filed the foregoing Bond and that they are worth the sum of Two Hundred Fifty Dollars (\$250.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

Subscribed and sworn to before me this 1st day of March, 1955.

[Seal]     /s/ JEANETTE Y. L. LEE,  
Notary Public, 1st Judicial Circuit, Territory of  
Hawaii.

My commission expires: 9/25/57.

[Endorsed]: Filed April 7, 1955. [46]

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In the United States District Court for the  
District of Hawaii

Civil No. 1254

LAU AH YEOW,

Plaintiff,

vs.

JOHN FOSTER DULLES, etc.,

Defendant.

February 4, 1955

ORAL RULING OF THE COURT

Before Hon. J. Frank McLaughlin, Judge.

The Court: The motion before the Court is one to strike, under Rule 11, the complaint as sham.

The complaint sought thus to be stricken is a second amended complaint. This second amended complaint was found adequate under Rule 8 previously.

When the Government's motion to dismiss the same was denied, for some reason or other within the time limited by the Rules for thereafter answering, the Government did not file a responsive pleading. Accordingly, a short time ago the plaintiff moved for a default judgment under Rule 55-E [49] against the United States. This was denied, for the plaintiff was not ready to proceed to put on a *prima facie* case warranting the issuance of a default judgment.

It was also observed at that time that default judgments with respect to citizenship were not favored by the Court and for good cause shown could be, in the Court's opinion, easily set aside. Therefore, in the interests of justice I allowed the Government ten days from that date within which to answer the amended complaint; said ten days have not yet expired, tomorrow being the tenth day.

In the meantime within said ten days this motion now before the Court to strike the second amended complaint as sham has been filed, and filed on the basis of interrogatories answered by the plaintiff but never served as required until the date upon which I denied the default judgment upon the United States.

The amended complaint alleges that: "The plaintiff in June, 1952, personally applied at the Amer-

ican Consulate General at Hong Kong for a United States passport." It also alleges in this complaint that the plaintiff on this date called on the Consul and made known his wishes and exhibited his documents, that "it was the opinion of the Vice Consul that the proof offered and presented to him was insufficient to establish plaintiff's United States citizenship; that by [50] reason of said Vice Consul's refusal to issue to plaintiff a United States passport, he, plaintiff, against his will was forced to continue to reside in a foreign country." The complaint goes on to describe a denial of rights based on this type of allegation.

As disclosed by the answers by the plaintiff to the interrogatories put to him by the Government, the plaintiff did not file an application for a passport. Filing an application for a passport is a very precise and definite written act which requires the performance of certain formalities outlined in the Code of Federal Regulations, Title 22, Section 54.14, 54.23, all of which provisions of the Code are applicable to applying for passports in foreign countries of the Foreign Service of the United States, Title 22, Code of Federal Regulations, Section 107.3.

It is quite obvious here from the answers of the plaintiff to the interrogatories that what he did was to inquire about the wisdom, feasibility of his spending his money to file a formal application. It appears, also, that as a result of the conversation that he had with the Consul—I draw this conclusion from the allegations of his complaint and from his



answers to the interrogatories—that the Consul, as a courtesy, reviewed his contention in the light of the documentary evidence that he had, and [51] apparently told him that he was wasting his time and money unless he had more to substantiate his claim, and that he should not then and there file a formal application for a passport.

In any event, not only was there no formal application for a passport, but whatever application there was, informal or otherwise, it was not denied, for if there be any denial of any description to be deduced from these allegations, it is simply that the Consul indicated that the claimant had not sufficiently identified himself as the person he represented himself to be, namely, a certain United States citizen.

The plaintiff says that he does have a birth certificate, but he has not produced it or a copy thereof either to the Consul or in conjunction with his pleadings in this case.

In any event, based on the allegations, which are specific, and the answers, one is forced to conclude that the two do not fit together. It appears that the allegations are simply made out of whole cloth in order to stay in court. They are entirely lacking in substance. The plaintiff, the real party, not his attorney, who knows what the facts are, shows that he did not have a right or privilege as a citizen of the United States denied to him, for he never squarely and formally asked for anything on that basis. [52]

He may be a citizen or not. The fact that this complaint is now stricken does not mean that he is not a citizen. It simply means that as the pleadings now stand the complaint is a sham and he is not eligible for any declaratory relief under Section 903.

I would commend you, Mr. Char, to read Rule 11 and reflect on the last two sentences of the Rule.

The motion to strike is granted.

#### Reporter's Certificate

I, Elbert Cripps, Official Court Reporter, U. S. District Court for the District of Hawaii, do hereby certify that the foregoing is a true and correct transcript of the proceedings reported and transcribed by me in Civil No. 1254, Lau Ah Yew, plaintiff, vs. John Foster Dulles, etc., defendant, on February 4, 1955.

/s/ ELBERT CRIPPS,

Official Court Reporter.

February 17, 1955.

Received February 16, 1955. [53]

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do

hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 55, consists of a statement of the names and addresses of the attorneys of record and of the various original pleadings and transcript of proceedings as herein below listed and indicated:

Second Amended Complaint.

Motion to Dismiss Second Amended Complaint, Memorandum of Points and Authorities, and Notice of Motion to Dismiss.

Order Overruling Motion to Dismiss.

Motion to Strike (Interrogatories by Defendant—copy) (Plaintiff's Answers to Interrogatories Made by Defendant on 25th Day of May, 1954—original), Memorandum of Points and Authorities, and Notice.

Application for the Entry of Judgment by Default against Defendant, Notice of Application for the Entry of Judgment by Default against Defendant, and Points and Authorities. [56]

Order Denying Application for the Entry of Judgment by Default against Defendant.

Order to Strike and to Dismiss.

Notice of Appeal to the United States Court of Appeals for the Ninth Circuit under Rule 73(b), and Bond on Appeal.

Designation of Record on Appeal.

Transcript of Proceedings, February 4, 1955, (Oral Ruling of the Court).

Counter-Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court, this 26th day of April, 1955.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk, U. S. District Court,  
District of Hawaii. [57]

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[Endorsed]: No. 14753. United States Court of Appeals for the Ninth Circuit. Lau Ah Yew, Appellant, vs. John Foster Dulles, Secretary of State of the United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed May 3, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 14753

LAU AH YEW,

Plaintiff-Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,  
Defendant-Appellee.

### APPELLANT'S STATEMENT OF POINTS

The appellant respectfully submits the following statement of points upon which he intends to rely on appeal:

1. The district court erred in denying appellant's Application for the Entry of Default upon the ground that no answer by the appellant had been filed with the clerk of the district court within ten days after the filing of the Order Overruling Motion to Dismiss.

2. The district court erred in granting the Motion to Strike and to Dismiss the Amended Complaint upon the ground that the allegations of the Second Amended Complaint relating to the application for a United States passport, and denial of the same passport application by the United States Consul were not substantiated by the appellant's answers to interrogatories.

Dated: Honolulu, T. H., this 16th day of April, 1955.

/s/ W. Y. CHAR.

Receipt of copy acknowledged.

[Endorsed]: Filed May 3, 1955.

The following is a list of the names of the persons who have been elected to the office of the President of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Vice-President of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Secretary of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Treasurer of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Auditor of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Librarian of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Corresponding Secretary of the Association for the year 1900. The names are given in alphabetical order of their surnames.

The following is a list of the names of the persons who have been elected to the office of the Recording Secretary of the Association for the year 1900. The names are given in alphabetical order of their surnames.